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(24)

आदेश पत्रक

मामला क्रमांक Cr.A.417 सन् 2002

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.417 OF 2002

DIVISION BENCH: **HON. SHRI L.C. BHADOO, &**
HON. SHRI DHIRENDRA MISHRA, JJ

APPELLANT

1. Thakur Ram, S/o Minturam Gond, aged 30 years.
2. Farsuram, S/o Minturam Gond, aged 22 years.

Both are resident of village Gourgaon, Gendarbeda, P.S. Mainpur, Distt. Raipur (C.G.)

Versus

RESPONDENT

State of Chhattisgarh
Through P.S. Mainpur,
Distt. Raipur (C.G.)

Present:
Mr. Ratindra Mishra, counsel for the appellants.
Mr. U.N.S. Deo, Govt. Advocate for the State.

O R A L J U D G M E N T

(25th April 2007)

PER L.C. BHADOO, J

This appeal is directed against the judgment of conviction and order of sentence dated 20th August 2001 passed by Special Judge (Atrocities) and Additional Sessions Judge, Raipur in

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Sessions Trial No. 287/2000 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for committing the murder of Dashrath and Ramdayal under Sections 302/34 of the IPC, sentenced each of them to undergo imprisonment for life and pay a fine of Rs.500/- for each murder, in default of payment of fine each of them to further undergo R.I. for one month. It was further directed that both the sentences shall run concurrently.

2. Case of the prosecution, in brief, is that on 24.6.2000 at about 11.25 a.m., PW-3 Ramratan gave a report in the Police Station Mainpur before S.H.O. Anup Singh Rathore (PW-12) to the effect that his father Dashrath Gond and elder brother Ramdayal Gond have been murdered by his cousins Thakurram and Farsuram by attacking them with lathis on account of animosity in connection with the land dispute. Receiving this report S.H.O. registered Merg No. 10/2000 (Ex.P/23) under Section 174 Cr.P.C. regarding the death of Dashrath and Merg No. 11/2000 (Ex.P/24) under Section 174 Cr.P.C. in connection with the death of Ramdayal. Copies of the above merg intimations were sent to the Sub Divisional Officer, Gariyaband. He also informed that accused persons used to quarrel with the deceased persons in connection with 30 acres joint land. He further informed that in the night of 23.6.2000 after taking his dinner, he was ploughing the field by tractor, at about 9.00 p.m. his sister-in-law Ramulabai (PW-2) came and informed him that Thakurram and Farsuram have

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attacked Ramdayal and Dashrath with lathis saying that they will finish them, as a result of which they sustained injuries on their heads and succumbed to the same. PW-3 gave the report in Police Station – Mainpur, based on that Anup Singh Rathore registered the crime No. 22/2000 for the offence under Sections 302/34, 201 of the IPC and took up the investigation. He left for the scene of occurrence and after giving notice (Ex.P/6 & Ex.P/8) to the Panchas, prepared the inquest on the body of deceased Dashrath and Ramdayal (Ex.P/7 & Ex.P/9, respectively). Dead bodies of Dashrath and Ramdayal were sent for postmortem examination to Primary Health Centre, Mainpur under Ex.P/25 & Ex.P/26. The S.H.O. prepared the site plan (Ex.P/3) of the place of occurrence. Plain and bloodstain soil were taken into possession from the place of occurrence under Ex.P/10 & Ex.P/11. Dr. K.C. Uraon (PW-10) conducted postmortem on 24.6.2000 on the dead bodies of Ramdayal and Dashrath and prepared postmortem report of deceased Ramdayal Ex.P/15 and that of deceased Dashrath Ex.P/16. In his reports, he has opined that cause of death of both the deceased persons was shock and haemorrhage and death was homicidal in nature. The accused persons were arrested. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Gariyaband who in turn committed the case to the Sessions Judge, Raipur from where learned Additional Sessions Judge received the case on transfer for trial.

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3. Prosecution examined 12 witnesses in order to establish the charge against the accused persons. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the circumstances appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime in question.

4. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced each of the accused persons as afore mentioned.

5. We have heard Mr. Ratindra Mishra, learned counsel appearing on behalf of the accused/appellants and Mr. U.N.S. Deo, learned G.A. for the State/respondent.

6. Mr. Ratindra Mishra at the outset argued that he is not disputing the homicidal death of Ramdayal and Dashrath. Moreover, PW-10 Dr.K.C.Uraon who conducted postmortem on the body of deceased Ramdayal, has noticed that there was a lacerated wound near the left ear in the size of 3 to 4 c.m., which was deep up to 1 to 1 ½ c.m., clotted blood was present on the left parietal bone and on dissection beneath the lacerated wound left bone was fractured. Death was on account of haemorrhage and it was homicidal in nature. His report is Ex.P/15. He has further stated that on the same day he conducted postmortem on the body of deceased Dashrath and noticed that there was a lacerated wound

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on the right side of the forehead in the size of 3 to 4 c.m., swelling around this wound in the size of 6 x 6 c.m. and there was a wound in the center of the head in the size of 5 to 6 c.m., clotted blood was present and on dissection of head, frontal and parietal bones were found fractured. Cause of death was shock and haemorrhage and death was homicidal in nature. His report is Ex.P/16. Therefore, in view of the above evidence of Dr. K.C. Uraon (PW-10), it is established that death of Ramdayal and Dashrath was homicidal in nature.

7. As far as involvement of the accused/appellants in commission of murder of Ramdayal and Dashrath is concerned, Mr. Ratindra Mishra, argued that in this case every witness has turned hostile. So far as the evidence of PW-7 Patiram is concerned, he has stated that accused Thakur and Farsuram made extra judicial confessions before him that they have committed the murder of Ramdayal and Dashrath by attacking them with burning wood. He submitted that the evidence of this witness regarding extra judicial confession cannot be believed because in the cross-examination this witness has categorically stated that he had not disclosed to the police about extra judicial confession made by the accused persons, therefore, this is an improvement before the Court and no reliance can be placed on the evidence of this witness. He also argued that except the evidence of PW-1 Mangli to the effect that she saw the accused

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persons standing at the place of occurrence holding lathis, there is no other evidence on record to connect the accused persons with the crime in question. He has also argued that even Mangli has stated that she did not see the accused persons attacking the deceased. Moreover, in the First Information Report (Ex.P/2) lodged by PW-3 Ramratan, it has been mentioned that his sister-in-law Ramulabai came to the agriculture field where he was working and informed him that Thakur and Farsuram have murdered his brother Ramdayal and father Dashrath on account of land dispute by attacking them with lathis, but Ramulabai has turned hostile and stated that she did not see anything in the hands of the accused persons. She has further stated that the accused persons did not attack the deceased persons in front of her, there were verbal quarrel. Even after declaring her hostile, she was cross-examined by the Public Prosecutor and in the cross-examination the prosecution has not been able to extract anything from her which establishes involvement of the accused/appellants in crime in question.

8. Mr. Mishra, further argued that merely on the ground that the accused persons were seen at the place of occurrence, they cannot be connected with the crime in question without any cogent evidence, on the presumption that they might have committed the offence.

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9. On the other hand, Mr Deo, learned counsel for the State supported the judgment of the trial Court and argued that as per the evidence of Dr.K.C. Uraon (PW-10), who conducted postmortem on the dead bodies of Ramdayal and Dashrath, he also examined the accused persons and noticed injuries on the body of both the accused persons, which suggests their involvement in the crime in question.

10. Having heard learned counsel for the respective parties, we have perused the material available on record including the judgment of the trial Court.

11. As far as extra judicial confession made by the accused persons before PW-7 Patiram is concerned, in paragraph 3 of his examination-in-chief he has stated that the accused persons made extra judicial confession before him to the effect that they have committed the mistake as both of them have committed the murder of Dashrath and Ramdayal by attacking them with burning wood. But in his cross-examination in paragraph 7 he has stated that this fact was not disclosed by him to the police because the incident was not witnessed by him and when today he was asked to disclose, he has disclosed this fact before the Court.

12. As per settled law unless a witness discloses the fact at the time of investigation before the police that the accused person made extra judicial confession before him, his evidence to that

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effect before the Court for the first time, cannot be believed because this amounts to improvement in his evidence. Such evidence cannot be believed on the principle that had the accused person made extra judicial confession before the witness concerned, then he should have disclosed that fact while giving statement under Section 161 of Cr.P.C. before the investigating officer or whenever he gets the first opportunity to disclose that fact before the investigating officer or any other person. However, in the present case PW-7 Patiram has stated before the Court for the first time after almost 10 months of the incident that the accused persons made extra judicial confession before him, which cannot be believed for the above reasons.

13. As far as evidence of eyewitness is concerned, PW-1 Mangli, wife of deceased Dashrath has stated in paragraph 2 of her evidence that Thakurram and Farsuram are well known to her as they are the sons of her brother-in-law. On the fateful day, at about 8.00 p.m. she was at her residence, her daughter-in-law Ramulabai came to her house and informed that her husband Dashrath has been assaulted by Thakurram and Farsuram and that *marpeet* has been committed in the house of elder son. Hearing this, she reached the spot and saw the injuries on the body of her husband. She herself has stated that she did not see the accused persons attacking the deceased persons, though at that time they were present there holding lathis in their hands.

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14. In view of above evidence, it is established that PW-1 Mangli was not an eyewitness to the incident, in fact she was at her residence, the offence was committed some elsewhere and on being informed by Ramulabai she went to the spot. Ramulabai has been examined as PW-2 and she has stated that at about 8.00 p.m. accused persons Thakurram and Farsuram quarreled with her father-in-law Dashrath, they were quarreling by exchanging words, she did not know as to what the accused persons were holding in their hands. She has further stated that she did not see the accused persons attacking the deceased persons. She has been declared hostile and has not supported the prosecution case. Even on cross-examination by Public Prosecutor she has stated that it is incorrect to say that *marpeet* took place in her presence and accused persons committed the murder of her father-in-law Dashrath. After seeing the incident as per the evidence of PW-1 Mangli, Ramulabai came to her house and informed Mangli at her residence. Mangli has further stated that when she reached the spot, she saw the accused persons standing on the place of occurrence carrying lathis in their hands, however, this evidence cannot be believed for the reasons that in the first instance, Ramulabai stated that she did not see the accused persons attacking the deceased persons, thereafter, she went to the house of Mangli and informed her about the incident, therefore, it does not sound to the reason that for such a long period after committing the murder of two persons, accused persons remained

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present at the place of occurrence and did not flee the spot. PW-3 Ramratan who lodged the report has also been declared hostile and in paragraph 3 of his evidence he has stated that he did not see the accused persons attacking his father Dashrath. In the FIR itself, he has stated that he was working at his agriculture field where Ramulabai came and informed him about the incident. PW-4 Hemraj has stated that at about 9.00 p.m. he was sleeping at his residence, at that time mother of Ramdayal i.e. Mangli, came and informed him that accused persons Thakurram and Farsuram have quarreled with Dashrath and Ramdayal and committed *marpeet*. She did not inform him about the weapon used by the accused persons to commit *marpeet*. Similarly, PW-5 Pilsai has also been declared hostile and he has stated that he was at his residence and Ramulabai did not disclose anything to him about the incident. PW-6 Punauram has stated that in the night he was not informed by anybody about the incident and only in the next day morning he came to know that Dashrath has been murdered by Thakurram and Farsuram. PW-7 Patiram is also not an eyewitness to the incident, therefore, there is no ocular evidence in this case to connect the accused persons with the crime in question. Even PW-12 Anup Singh Rathore, Investigating Officer, in his evidence in paragraph 18 has stated that he could not seize the lathis, weapons of offence from the accused persons.

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	15. In view of above, there is no ocular or circumstantial evidence on record to show the involvement of the accused/appellants in the crime in question and merely on account of some abrasions found on the body of accused persons, they cannot be connected with the crime in question. Therefore, conviction of accused/appellants under Section 302/34 of the IPC cannot be sustained for the reasons stated above. 16. In the result, the appeal succeeds. Conviction of the accused/appellants under Section 302/34 of the IPC for commission of murder of Dashrath and Ramdayal and sentence imposed thereon, are set aside. They are acquitted of the above charges. It is stated that the accused/appellants are in detention since 28.6.2000, they be set at liberty forthwith if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge** **Sd/-** **Dhirendra Mishra** **Judge**	

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